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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 136 OF 2004
IN
TP NO.1242 OF 1999

Ajay Piramal & Ors. .. Plaintiffs.

vs.

Aleya Chinmulgund & Anr.

& Ors. .. Defendants.

Mr. D.D. Belosey for applicants.

Mr. Alaya Chinmulgund present.

Mr. Naushad Engineer i/by Desai & Dwanji & Co.

for the respondent nos. 1 to 3.

CORAM : S.U.KAMDAR, J.

DATE : 5th August, 2005.

P.C.

. The present notice of motion was heard by me on 22.7.2005. On a complaint of the applicant that the estate of the deceased has not ben administered, I as per the consent of the parties took steps for effective administration of the estate of the deceased particularly one property which was yet not sold. The basic complaint of the applicant on the last occasion was that her personal belongings are

lying in the said premises and she is not allowed to remove the same. To satisfy her contention, I had appointed a Court Officer Mr. Trivedi, as Commissioner to visit the premises and if there are belongings of the applicant lying in the premises, the same to be handed over to the applicant. The Commissioner has visited the said premises and prepared inventory of the belongings lying therein. The said report of the Commissioner is taken on record and marked "X" for identification. The parties are at liberty to take copies of the said report of the Commissioner. In so far as the sale of the flat was concerned, I also strived to see that the said flat can be sold and pursuant thereto on express consent of the parties including the applicant herein who was present in Court and was represented through an Advocate, I appointed an Architect for the purpose of valuation of the flat and directed the petitioners to give an advertisement in the newspaper inviting offers from various parties. Some offers have been received which are handed over by the learned counsel for the plaintiff. I direct the office of the Prothonotary and Senior Master, High Court, Bombay to put the said sealed offers in a separate envelope along with sealed valuation report and the report of the Commissioner. All these documents after placing in a separate envelope will be sealed by the Prothonotary and Senior Master, High Court, Bombay

and to be opened in accordance with orders of the Court. The said papers will be retained by the Officer of the Prothonotary and Senior Master till further orders.

2. Today the applicant is appearing in person and has sought to discharge her advocate and the applicant is inter alia contending that she wants a stay of the order dated 25.7.2005. She insists that she is not agreeable to the said order dated 25.7.2005 and her motion be heard. In the aforesaid circumstances, I am hearing the motion on merits.

3. Turning to the notice of motion, prayer clause (a) of the notice of motion pertains to a direction that the petitioner to furnish the accounts on administration of the estate of the deceased duly certified by the Chartered Accountant. The executor is directed to furnish the accounts after the estate is fully administered as provided under the Indian Succession Act. On estate being fully administered the executors will furnish accounts within a period of four weeks therefrom. A copy of such accounts will also be given to the applicant.

4. In so far as prayer clause (b) is concerned, inventory of the articles lying in the flat at Ranjit Apartment has already been taken. Today for

the first time the applicant is contending that inventory of the items which are lying in the garage is not taken. Prayer clause (b) of the motion does not mentioned of the garage at all and, therefore, the question of taking inventory of the articles, if any, lying in the garage, did not arise nor does it arise today in view of the inventory already taken. There is no further question of granting any relief in terms of prayer clause (b) of the motion. If there are any articles which are personally belonging to the applicant then on the applicant identifying the same, the Commissioner is authorised to hand over the same to the applicant.

5. In so far as prayer clause (c) is concerned, by the said prayer, the applicant is seeking the payment of maintenance charges and compensation from respondent no. 4 for the use and occupation of flat no. 13 in Ranjit Apartment. In so far as prayer clause (c) is concerned, it is an admitted position that the respondent no. 4 is an estranged husband of the applicant. He was in occupation, according to the applicant, for a period of three years and 8 months. In any event, such relief against third party is not maintainable in testamentary jurisdiction and that too by way of a notice of motion. Hence, prayer clause (c) of the motion is rejected.

6. In so far as prayer clauses (d) and (e) are concerned, they are during the pendency of the motion. In view of the fact that the motion itself is finally disposed of, the said prayers do not survive.

7. Motion disposed of accordingly. On the request of the applicant herein, further proceedings of identifying articles belonging to her personally in the inventory and/or further proceedings of sale of the flat as directed by my order dated 25.7.2005 is stayed for a period of four weeks from today. The keys of the premises also to be handed over by the Commissioner to the Prothonotary and Senior Master, High Court, Bombay, which will be retained along with other documents which are directed to be retained under this order.

8. The petitioners are directed to pay the costs, charges and expenses of the Commissioner and Architect appointed pursuant to the order dated 25.7.2005 from the estate of the deceased.